
OLR Bill Analysis

sHB 6653

AN ACT CONCERNING DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION REGULATORY STREAMLINING TO ASSIST MUNICIPALITIES.

SUMMARY:

This bill makes many changes to the state's environmental laws. Among other things, it:

1. requires municipal water pollution control plans to be (a) consistent with the state's plan of conservation and development and (b) reviewed and approved by the Department of Energy and Environmental Protection (DEEP) commissioner (§ 1);
2. modifies the information regarding public notice that certain permit and license applicants must provide to the commissioner (§ 2);
3. eliminates the commissioner's authority to create tidal wetlands boundary maps (§ 4);
4. expands the circumstances where the commissioner must hold a public hearing for water quality certification under the federal Water Pollution Control Act, or a permit to conduct certain activities below the coastal jurisdiction line in tidal, coastal, or navigable waters (§§ 3 & 8);
5. allows the commissioner to provide certain notices electronically (§§ 5, 9 & 10);
6. allows, rather than mandates, an inland wetlands activity general permit to provide notice of the proposed activity to local land use agencies and removes a provision allowing the agencies to submit written comments on the activity to the commissioner

(§ 6);

7. extends the date by which the commissioner must adopt regulations exempting categories of water discharges from certain plan and specification requirements (§ 11);
8. requires the commissioner to issue and record on the land records a certificate of revocation when he revokes a final order to correct potential sources of, or abate, pollution (§ 13);
9. eliminates requirements for the commissioner to prepare, amend, and make publicly available a list of certain general permit holders (§§ 15 & 16); and
10. allows the commissioner to (a) set the fee for using certain sand, gravel, or other material waterward of the high water mark by regulation and (b) waive the fee (§ 17).

The bill repeals several environmental statutes, including a (1) public education program on solid waste disposal practices, (2) program related to greenhouse gas labeling for motor vehicles, and (3) requirement that DEEP offer carbon dioxide allowances (§§ 18-21 & 23, see Table 1).

It also eliminates requirements that DEEP adopt regulations on (1) farm resources management plans, (2) sewage treatment system additive registration, (3) residential heating oil storage tank systems, and (4) official recycling symbols (§§ 7, 12, 14, 18, 22 & 23, see Table 1).

The bill also makes many technical and conforming changes.

EFFECTIVE DATE: October 1, 2013

§ 1 — WATER POLLUTION CONTROL PLANS

By law, a municipal water pollution control authority may prepare and update a water pollution control plan for the municipality. The bill requires (1) such a plan to be consistent with the state's plan of conservation and development and (2) a copy of the plan, and any updates to it, to be submitted to the DEEP commissioner for review

and written approval. Under current law, the plan is only filed with the commissioner.

§ 2 — NOTICE FOR INDIVIDUAL PERMITS OR LICENSES

Under current law, applicants for certain permits or licenses (e.g., conducting regulated activities in tidal or inland wetlands or certain activities below the coastal jurisdiction line, air contaminant source and solid waste facility construction, and dam construction or alteration) must:

1. include with the application a signed statement certifying that the applicant will publish notice of it on a form the DEEP commissioner supplies,
2. publish the notice in a newspaper of general circulation in the affected area, and
3. send a certified copy of the notice as it appeared in the newspaper to the commissioner.

By law, these applicants must also notify the chief elected official in the town where the regulated activity is proposed.

The bill instead requires such applicants to (1) publish notice of the application in a newspaper of general circulation in the affected area, and (2) include with the application a (a) copy of the notice as it appeared in the newspaper and (b) signed statement certifying that the applicant notified the municipality's chief elected official.

The bill prohibits the commissioner from processing an application until the applicant submits to him the signed statement and a copy of the newspaper notice, instead of only the notice which current law requires.

§ 4 — TIDAL WETLANDS INVENTORY

The bill eliminates DEEP's authority to inventory Connecticut's tidal wetlands. It correspondingly removes current law's requirements on the:

1. depiction of tidal wetlands in boundary maps;
2. procedure by which the maps are created, provided to the public, and may be appealed; and
3. process for the commissioner to (a) periodically inspect the wetlands to determine if revisions to the maps are necessary and (b) update the maps.

§ 7 — FARM RESOURCES MANAGEMENT PLANS

The bill allows, rather than requires, the DEEP commissioner to adopt regulations for farm resources management plans. Current law required him to publish notice of intent to adopt such regulations by July 1, 1999, but the regulations have not been adopted. Current law requires the regulations to include, among other things, a priority system and procedures for deciding if a farm management plan is necessary; best management practices, restrictions, and prohibitions for manure management; storage and handling of pesticides; and criteria and procedures for submitting and reviewing the plans and amendments to the plans. Under the bill, these requirements are no longer mandatory.

Existing law allows the commissioner to require a farm resources management plan from anyone engaged in agriculture on land in an aquifer protection area with gross sales from agricultural products of at least \$2,500 during the prior calendar year. But he must do so according to the above regulations.

§§ 3 & 8 — HEARINGS BY PETITION

The bill expands the circumstances in which the DEEP commissioner must hold a public hearing on a permit application for (1) an application for a water quality (Section 401) certification under the federal Water Pollution Control Act (WPCA) or (2) conducting certain activities below the coastal jurisdiction line in tidal, coastal, or navigable waters.

Water Quality Certification

The bill allows anyone to submit a petition signed by at least 25

people to the commissioner for a public hearing on a tentative determination by the commissioner on a WPCA water quality certification application (see BACKGROUND). Under current law only the applicant may seek a hearing. The bill requires the commissioner grant the petition for a public hearing if it is timely and in writing, the same as for an applicant's request under current law.

Activity in Tidal, Coastal, or Navigable Waters

By law, DEEP regulates dredging, erecting structures, placing fill, and related work in tidal, coastal, or navigable waters below the coastal jurisdiction line. The DEEP commissioner must hold a public hearing on a permit application to conduct such work if (1) the applicant requests one in writing or (2) he receives a petition signed by at least 25 people requesting one and the application will (a) significantly affect a shellfish area, (b) have interstate ramifications, or (c) require a certificate of environmental compatibility and public need or approval from the Federal Energy Regulatory Commission (FERC). The law allows him to hold a public hearing on a permit application if he determines it is in the public interest.

Under the bill, the commissioner instead must hold a public hearing on an application if he receives a request from the applicant or a petition signed by at least 25 people requesting one for any reason.

§§ 5, 9 & 10 — ELECTRONIC NOTICE

The bill allows the DEEP commissioner to provide certain notices by electronic means, instead of only by mail as current law requires, in connection with permit applications for (1) inland wetlands regulated activity, (2) water diversion, and (3) dam construction.

Inland Wetlands Regulated Activity Permit

The law allows the commissioner to waive the public hearing requirement for an inland wetlands application if he determines the activity is not likely to significantly impact the wetland or watercourse involved. But under current law he must (1) publish, in a newspaper with general circulation in the impacted towns, notice of his intent to waive the hearing and (2) mail notice of his intent to the (a) chief

administrative officers in the towns where the activity will occur and (b) such towns' conservation commission and inland wetlands agency chairmen. The bill allows the commissioner to provide notice to the town officials electronically.

If the commissioner holds a public hearing on an inland wetlands application, the bill allows him to provide electronic notice of it to the chief administrative officer in the towns where the activity will occur and such towns' conservation commission and inland wetlands agency chairmen. Current law requires him to do so by mail.

Diversion Permit

The bill allows the commissioner to notify by electronic means, an applicant for a water diversion permit that the application is complete. Under current law, he must provide this notice by certified mail, return receipt requested.

By law, after the commissioner notifies the applicant about a complete application, he must immediately provide notice of the application and a brief description of the proposed diversion to the:

1. governor,
2. attorney general,
3. House speaker,
4. Senate president pro tempore,
5. Office of Policy and Management secretary,
6. public health and economic and community development commissioners,
7. Public Utilities Regulatory Authority chairperson,
8. chief executive officer and chairmen of the conservation commission and wetlands agency of towns impacted by the diversion, and

9. any person who requested notice.

The bill specifies that this notice is provided electronically.

Dam Work Permit

The bill allows the commissioner to notify, by electronic means, an applicant to conduct certain dam work of his intent to grant or deny a permit. Current law requires him to provide this notice by certified mail, return receipt requested.

The bill also allows the commissioner to notify by electronic means, instead of only by mail, his intent to the chief executive officer; inland wetland agency; and planning, zoning, and conservation commissions of each town where the work will occur or have effect.

§ 11 — REGULATIONS FOR EXEMPTING DISCHARGE SYSTEMS

The bill extends the date, from June 30, 2011 to February 1, 2015, by which the DEEP commissioner must adopt regulations exempting categories of wastewater discharges from submitting certain plans and specifications. By law, these regulations may (1) set minimum standards for designing and operating a discharge treatment system and (2) impose reporting requirements.

The law already allows the commissioner to exempt people and municipalities from this requirement if the discharge:

1. comes from a new system that is substantially the same as the current one as long as the current one is operating in compliance with a DEEP permit,
2. is described in a general permit,
3. comes from a system the commissioner determines was not designed to treat toxic or hazardous substances, or
4. is one the commissioner determined by regulation is not likely to cause substantial pollution.

§ 13 — CERTIFICATE OF REVOCATION

The bill requires the DEEP commissioner to issue a certificate of revocation and file it on the land records in the town where the land at issue is located, when he revokes a final order to abate water pollution or correct potential sources of such pollution. He must also send a copy of the certificate to the landowner. By law, the commissioner must issue and file a certificate of compliance and mail a copy to the landowner when such an order is complied with.

§§ 6, 15 & 16 — GENERAL PERMITS

Inland Wetlands

Under the bill, the DEEP commissioner may, rather than must, require state agencies, departments, or instrumentalities other than a regional or local board of education, intending to conduct a minor regulated activity in an inland wetland covered by a DEEP general permit, to provide written notice to the:

1. inland wetlands agency, zoning commission, planning commission or combined planning and zoning commission, and conservation commission of a municipality that will or may be impacted by the activity and
2. departments that make such notices publicly available.

Current law requires the notice to be provided at least 60 days before the activity starts. The bill provides no specific timeframe.

The bill eliminates current law's provision allowing any person, inland wetlands agency, planning and zoning commission, or conservation commission to submit written comments on the activity covered by such a general permit to the commissioner at least 25 days before the activity starts.

Water Diversion, Tidal Wetlands, and Tidal, Coastal, or Navigable Waters

By law, the DEEP commissioner may issue general permits for (1) minor water diversion activity and (2) certain minor activity conducted in tidal wetlands or below the coastal jurisdiction line in tidal, coastal, or navigable waters.

For a water diversion general permit, the commissioner must determine that the diversion would (1) cause minimal environmental effects and (2) not adversely impact water use for potable water supplies, hydropower, flood management, water-based, recreation, industry, or waste assimilation. For a general permit to conduct an activity in tidal wetlands or tidal, coastal, or navigable waters, the activity must (1) minimally effect the environment, (2) be consistent with applicable state policies and considerations, including the Coastal Management Act, and (3) be an acceptable encroachment on public lands and waters.

The bill allows the commissioner to issue a general permit for any activity, as opposed to a minor one, as long as the same conditions are met.

It also eliminates the requirement that he (1) prepares, (2) annually amends, and (3) makes publicly available lists of the holders of these general permits.

§ 17 — BENEFICIAL OR COMMERCIAL USE FEE

By law, anyone who removes sand, gravel, or other material lying waterward of the mean high water mark in Connecticut's tidal, coastal, or navigable waters under a permit generally must pay a fee to the state to make beneficial or commercial use of it. The bill authorizes the DEEP commissioner to adopt regulations establishing the fee amount. Until then the fee remains \$4 per cubic yard, the fee required under current law. The bill also allows the commissioner to waive the fee if the sand, gravel, or other material is decontaminated or processed to meet applicable environmental standards for reuse.

§§ 12, 14, & 18-23 — REPEALED STATUTES AND REGULATIONS

The bill repeals many environmental statutes and eliminates several provisions requiring DEEP to adopt regulations, as described in Table 1. It makes technical and conforming changes based on their removal.

Table 1: Repealed Statutes and DEEP Regulation Requirements

<i>Statutory</i>	<i>Description</i>	<i>Bill §</i>
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<i>Citation</i>		
§ 16-246g and § 22a-174l	Requirement for DEEP to issue a general permit for constructing and operating certain emergency engines and distributed generation resources. Pilot program to increase the operation of these electric generation resources, implemented by DEEP's Public Utilities Regulatory Authority.	18, 23
§ 22a-31	Requirement that DEEP appoint hearing officers for tidal wetlands applications proceedings.	23
§ 22a-174m	Requirement that DEEP offer carbon dioxide allowances, for a fixed price, to certain combined heat and power sources (cogeneration) subject to long-term power purchase agreements.	18, 23
§§ 22a-201 to 22a-201b	Requirement for DEEP to establish programs for (1) greenhouse gas labeling for new vehicles sold or leased in Connecticut and (2) public education about the labeling. Prohibition on selling or leasing a new motor vehicle in the state without the Connecticut-specific label DEEP creates. Authorization to use up to 40% of funds from a "greenhouse gas reduction fee" charged on the registration of new motor vehicles to implement the labeling and education programs. (Federal law requires similar informational labels on new motor vehicles.)	18, 19, 23
§ 22a-213a	Reporting requirement for biomedical waste generators to inform DEEP of its disposal contractor, the amount of waste, and the disposal site. (The state's solid waste management regulations require generators to provide such information.)	18, 23
§ 22a-240	Public education program development requirement for DEEP to inform the public on risk assessment and risk management of solid waste disposal practices.	18, 20, 21, 23
§ 22a-255c	Requirement for DEEP to adopt, by regulation, official recycling symbols and procedures for their use.	18, 22, 23
§ 22a-370	Notice requirement for people requesting a water diversion permit to inform the chief executive officer of the towns where the diversion will occur. (Another law, § 22a-6g, requires water diversion permit applicants to provide the same notice to the chief elected official of the town where the diversion is proposed.)	23
§ 22a-449m(b)	Requirement for DEEP to adopt regulations (1) establishing standards and criteria for residential underground heating oil storage tank systems and (2) regarding the removal of pipes connected to aboveground and underground residential heating oil storage tank systems when a tank is removed. (The residential heating oil tank program expired in 2001.)	14
§ 22a-461(e)	Requirement for DEEP to adopt regulations requiring registration of sewage treatment system additives.	12

BACKGROUND

Water Pollution Control Act

The federal Water Pollution Control Act (33 USC § 1251 et seq.), also

known as the Clean Water Act, is aimed at restoring and maintaining the chemical, physical, and biological integrity of the nation's waters. Under § 401 of the act, applicants for certain federal licenses or permits must obtain a certification from the state that the proposed activity is consistent with the WPCA and state water quality standards.

General Permit

DEEP uses both individual and general permits to regulate activities. Individual permits are issued directly to an applicant, while general permits authorize similar minor activities by one or more applicants. The authorization of an activity under a general permit is governed by that general permit.

Related Bills

sHB 6441, reported favorably by the Environment Committee, modifies the minor dam activity general permit notice and comment requirements.

sSB 1019, reported favorably by the Environment Committee, removes the requirement to prepare, annually amend, and make publicly available a list of general permit holders of inland wetlands permits.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 18 Nay 10 (03/27/2013)